

The Texas Forensic Science Commission (“Commission”) proposes amendments to 37 Tex. Admin. Code §651.7 to add the forensic discipline “workplace/employment drug testing” to the list of forensic disciplines exempt from Commission accreditation requirements and to remove “forensic photography” and “forensic psychology, including profiling, memory analysis and other forms of forensic psychology” from the list of forensic disciplines exempt from Commission accreditation requirements. “Forensic photography” and “forensic psychology” do not require rule exemptions because they do not entail an expert examination or test performed on physical evidence. The amendments are necessary to update the rule language in Title 37, Part 1, Chapter 651, Subchapter A, § 651.7 to reflect adoptions made by the Commission at its April 20, 2018 quarterly meeting. The amendments are made in accordance with the Commission’s accreditation authority under Tex. Code. Crim. Proc. art. 38.01§4-d(c).

Fiscal Note. Leigh M. Savage, Associate General Counsel of the Texas Forensic Science Commission, has determined that for each year of the first five years the proposed amendments will be in effect, there will be no fiscal impact to state or local governments as a result of the enforcement or administration of the proposal. There will be no anticipated effect on local employment or the local economy as a result of the proposal.

Rural Impact Statement. The Commission expects no adverse economic effect on rural communities as the proposed amendments do not impose any direct costs or fees on municipalities in rural communities.

Public Benefit/Cost Note. Leigh M. Savage, Associate General Counsel of the Texas Forensic Science Commission has also determined that for each year of the first five years the proposed amendments are in effect, the anticipated public benefit will be proper notification of the forensic disciplines subject to the Commission's accreditation program.

Economic Impact Statement and Regulatory Flexibility Analysis for Small and Micro Businesses. As required by the Government Code § 2006.002(c) and (f), Leigh M. Savage, Associate General Counsel of the Texas Forensic Science Commission has determined that the proposed amendments will not have an adverse economic effect on any small or micro business because there are no anticipated economic costs to any person who is required to comply with the rules as proposed.

Takings Impact Assessment. Leigh M. Savage, Associate General Counsel of the Texas Forensic Science Commission has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking or require a takings impact assessment under the Government Code §2007.043.

Government Growth Impact Statement. Leigh M. Savage, Associate General Counsel of the Texas Forensic Science Commission, has determined that for the first five-year period, implementation of the proposed amendments will have no government growth impact as described in Title 34, Part 1, Texas Administrative Code §11.1. The proposed amendments exempt certain forensic disciplines from forensic oversight and in turn reduce the Commission’s oversight authority related to these disciplines. The proposed amendments do not create a new regulation. The proposed amendments limit existing Commission regulations as they pertain to these particular forensic disciplines. The proposed amendments decrease the number of laboratories subject to the rule’s

applicability. The proposed amendments positively affect the state's economy because they propose a reduction in regulation.

Request for Public Comment. The Texas Forensic Science Commission invites comments on the proposal from any member of the public. Please submit comments to Leigh M. Savage, 1700 North Congress Avenue, Suite 445, Austin, Texas 78701 or leigh@fsc.texas.gov. Comments must be received by [DATE] to be considered by the Commission.

Statutory Authority. The amendment is proposed under Tex. Code Crim. Proc. art 38.01 § 4-d.

Cross reference to statute. The proposal affects 37 Tex. Admin. Code § 651.7.

TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 15. TEXAS FORENSIC SCIENCE COMMISSION

CHAPTER 651. DNA, CODIS, FORENSIC ANALYSIS, AND CRIME LABORATORIES

SUBCHAPTER A. ACCREDITATION

§651.7. Forensic Disciplines and Procedures Exempt from Accreditation Requirements by Administrative Rule

(a) The Commission has exempted the following categories of forensic analysis from the accreditation requirement by administrative rule:

- (1) sexual assault examination of a person;
- (2) forensic anthropology, entomology, or botany;
- (3) environmental testing;
- (4) facial or traffic accident reconstruction;
- (5) serial number restoration;
- (6) polygraph examination;
- (7) voice stress, voiceprint, or similar voice analysis;
- (8) statement analysis;
- (9) forensic odontology for purposes of human identification or age assessment, not to include bite mark comparison related to patterned injuries;
- (10) testing and/or screening conducted for sexually transmitted diseases;
- (11) fire scene investigation, including but not limited to cause and origin determinations; or
- (12) crime scene investigation or reconstruction, including the identification, preservation or collection of physical evidence, bloodstain pattern analysis and trajectory determination.[:]

[(13) other discipline or category of analysis so determined by the Commssion, including those identified and listed at the Commission's website.]

(b) A request for exemption shall be submitted in writing to the Commission.

(c) This subsection describes a discipline, category of analysis, or procedure that does not have as its principal purpose determining the connection of physical evidence to a criminal action[not normally involve forensic analysis of physical evidence for use in a criminal proceeding and for

which recognized accreditation is inappropriate or unavailable]. Accordingly, accreditation is not required for the following:

(1) forensic photography;

(2) non-criminal paternity testing;

(3) non-criminal testing of human or nonhuman blood, urine, or tissue, including but not limited to workplace/employment drug testing;

[(4) a crime scene investigation team (whether or not associated with an accredited laboratory) if the team does not engage in forensic analysis because it only engages in the location, identification, collection or preservation of physical evidence and the activity is not integral to an expert examination or test;]

(5) forensic psychology, including profiling, memory analysis and other forms of forensic psychology; or

(6) other evidence processing or handling that is excluded under §651.2(2) of this subchapter; or]

[(7) other discipline or category of analysis as so determined by the Commission.]